

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

1. BURLINGTON NORTHERN & SANTA FE RAILWAY COMPANY,
a foreign corporation,

Plaintiff,

v.

2. PATRICK PILGYUN HAN, M.D.

Defendant.

Case No. 14-CV-69-CVE-PJC

JURY TRIAL DEMANDED

COMPLAINT

COMES NOW, Plaintiff Burlington Northern Santa Fe Railway Company, by and through its attorneys of record, Gibbs, Armstrong, Borochoff, Mullican & Hart, P.C., and for its cause of action against the Defendant, alleges and states as follows:

PARTIES, JURISDICTION & VENUE

1. The Plaintiff (“BNSF”) is a corporation incorporated under the laws of Delaware with its principal place of business in Ft. Worth, Texas.

2. Defendant, Patrick Pilgyun Han, M.D., is an Oklahoma medical doctor doing business in Tulsa County, Oklahoma.

3. The events giving rise to this action occurred in Tulsa County, State of Oklahoma.

4. The federal court has diversity jurisdiction pursuant to 28 United States Code (U.S.C.), Section 1331, due to complete diversity of the parties and as the amount in dispute exceeds \$75,000.

5 Therefore, jurisdiction and venue is proper in this court.

LIABILITY FACTS

6. At all times relevant to this action, Defendant Patrick Pilgyun Han, M.D. held himself out as a specialist in neurological surgery.

7. Before seeking treatment from Defendant, Jamie Kay Detre was involved in a September 1, 2004 collision with a BNSF train.

8. Jamie Kay Detre filed suit for personal injuries on December 20, 2005 in a case styled *Jamie Kay Detre v. Burlington Northern Santa Fe Railway Company, David Winters and Vince Summers*, Creek County Case No. D-CJ-2005-29. *See* Petition, attached as Exhibit 1.

9. On or about August 25, 2006, nearly two years after the aforementioned train accident, Defendant treated Jamie Kay Detre for a direct traumatic carotid cavernous fistula in a negligent manner that fell below the requisite standard of care. In doing so, Defendant failed to exercise the degree of learning and skill ordinarily possessed by other neurological surgeons under similar circumstances. Defendant's acts and omissions represented a gross deviation from the appropriate standard of care.

8. Jamie Kay Detre passed away on August 28, 2006 as a direct result of Defendant's negligence.

9. Jamie Kay Detre's death was not caused by the collision with BNSF's train.

10. On or about November 3, 2008, the Estate of Jamie Kay Detre added a claim for wrongful death to Creek County Case No. D-CJ-2005-29. A copy of the Amended Petition is attached as Exhibit 2.

11. On or about October 12, 2010, Plaintiff settled Creek County Case No. D-CJ-2005-29 and paid Jamie Kay Detre's Estate a confidential settlement amount that far exceeded its

liability for the personal injuries suffered by Ms. Detre. Defendant Patrick Pilgyun Han, M.D. was specifically named in the release.

FIRST CAUSE OF ACTION—CONTRIBUTION

12. The Amended Petition alleged claims for both personal injury and wrongful death on behalf of Jamie Kay Detre against the Plaintiff BNSF, and Plaintiff's agents, employees, and/or representatives Winters, and Summers, as a result of her collision with a BNSF train.

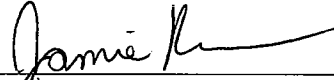
13. Plaintiff BNSF alleges it played some part in bringing about personal injury to Jamie Kay Detre, but alleges that her death was caused by the negligence of Defendant, Patrick Pilgyun Han, M.D.

14. Plaintiff BNSF extinguished Defendant's liability for wrongful death as to Jamie Kay Detre. In so doing, Plaintiff BNSF paid more than its share of the common liability. Now, it is entitled to contribution from Defendant.

Accordingly, Plaintiff demands Judgment against Defendant Patrick Pilgyun Han, M.D. for the wrongful death damages paid on his behalf in an amount in excess of Seventy Five Thousand Dollars (\$75,000) for such amount as the trier of fact determines to be the share of the liability of Defendant Patrick Pilgyun Han, M.D. for the wrongful death of Jamie Kay Detre, along with costs and attorney fees incurred by Plaintiff.

Respectfully Submitted,

**GIBBS, ARMSTRONG, BOROCHOFF,
MULLICAN & HART, P.C.**

A handwritten signature in dark ink, appearing to read "Jamie Rogers", is written over a horizontal line.

George Gibbs, OBA # 11843
George Mullican, OBA # 16701
Jamie A. Rogers, OBA # 19927
601 South Boulder, Suite 500
Tulsa, Oklahoma 74119
Telephone (918) 587-3939
Facsimile (918) 582-5504

DOCKETED

IN THE DISTRICT COURT OF CREEK COUNTY
DRUMRIGHT DIVISION
STATE OF OKLAHOMA

FILED IN DISTRICT COURT OF
CREEK COUNTY, OKLAHOMA
2008 DEC 20 PM 4:53
PAUL J. HARRIS
COURT CLERK

JAMIE KAY DETRE,

Plaintiff,

vs.

Case No.

D-CJ-2005-291

BURLINGTON NORTHERN &
SANTA FE RAILWAY COMPANY,
a foreign corporation, and
DAVID WINTERS and VINCE
SUMMERS,

Attorney's Lien Claimed

Defendants.

PETITION

COMES NOW the Plaintiff and for this her claim and cause of action against the Defendants, and each of them, alleges and states as follows:

I

That the facts which give rise to this cause of action occurred in Creek County, Oklahoma.

That the Burlington Northern & Santa Fe Railway Company, hereinafter referred to as "BNSF", is a foreign corporation doing business in Creek County, Oklahoma.

That the Defendants, David Winters and Vince Summers, were at all times material herein agents, servants and employees of the Defendant, BNSF, and were acting within the scope and appointment of their agency and authority.



That this Court has jurisdiction of the parties and the subject matter of this action.

II

That on or about the 1st day of September, 2004, the Plaintiff was operating a motor vehicle and proceeding in a southerly direction on Highway 48 in Creek County, Oklahoma, at the point where it intersects with the BNSF railroad track. That at the same time and place, the Defendant, BNSF, was westbound, traveling at a high rate of speed.

That as a result of the negligence of Defendants, a violent collision occurred.

III

That as a result of the negligence of the Defendants, this Plaintiff has suffered injuries which have prevented her from transacting her business, forced her to expend large sums of money to effect a cure to her injuries, which injuries are serious, permanent, painful and disfiguring in their nature. In addition, this Plaintiff has suffered a loss of wages and a loss of earning capacity.

IV

That at the time of the negligence of the Defendants and the resulting injuries to this Plaintiff, this Plaintiff was 40 years of age with a normal life expectancy of 41.6 years according to the United States Life Tables.

V

That at the time of the collision, and for many months before, the Defendant, BNSF, was aware of the extra hazardous conditions existing at the grade crossing that would probably result in serious injuries or death to others, but willfully, wantonly and recklessly disregarded the safety of the public by reason of which the Plaintiff is entitled to punitive damages.

WHEREFORE, premises considered, Plaintiff prays judgment against Defendants, and each of them, in a sum in excess of \$10,000.00 as and for actual damages, and for a sum in excess of \$10,000.00 as and for punitive damages against the Defendant BNSF, together with interest thereon, all costs of this action, and for such other relief to which she may be entitled.

Respectfully submitted,

FRASIER, FRASIER & HICKMAN, LLP

By: 

James E. Frasier, OBA#3108

Steven R. Hickman, OBA#4172

Frank W Frasier, OBA#17864

George M. Miles, OBA#11433

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DOCKETED
by SA 11/13

RECEIVED
NOV - 6 2008

IN THE DISTRICT COURT OF CREEK COUNTY
DRUMRIGHT DIVISION
STATE OF OKLAHOMA

ROBERT BRETT ARNOLD, Jr., as
personal representative of the
estate of JAMIE KAY DETRE,
deceased

Plaintiff,

vs.

Case No. D-CJ-2005-29
Judge Vassar

BURLINGTON NORTHERN &
SANTA FE RAILWAY COMPANY,
a foreign corporation, and
DAVID WINTERS and VINCE
SUMMERS,

Defendants,

vs.

MARK BRANDON ARMSTRONG,

Third-Party Defendant.

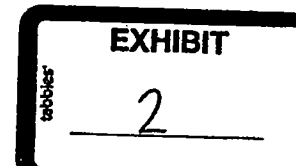
FILED IN DISTRICT COURT
CREEK COUNTY OKLAHOMA
2009 NOV - 8 PM 3:41
PM CLERK COURT CLERK

AMENDED PETITION

COMES NOW the Plaintiff and for this his claim and cause of action against
the Defendants, and each of them, alleges and states as follows:

I

That the facts which give rise to this cause of action occurred in Creek
County, Oklahoma.



That the Burlington Northern & Santa Fe Railway Company, hereinafter referred to as "BNSF", is a foreign corporation doing business in Creek County, Oklahoma.

That the Defendants, David Winters and Vince Summers, were at all times material herein agents, servants and employees of the Defendant, BNSF, and were acting within the scope and appointment of their agency and authority.

That this Court has jurisdiction of the parties and the subject matter of this action.

II

That on or about the 1st day of September, 2004, the Plaintiff's decedent was operating a motor vehicle and proceeding in a southerly direction on Highway 48 in Creek County, Oklahoma, at the point where it intersects with the BNSF railroad track. That at the same time and place, the Defendant, BNSF, was westbound, traveling at a high rate of speed.

That as a result of the negligence of Defendants, a violent collision occurred.

III

That as a result of the negligence of the Defendants, this Plaintiff's decedent has suffered injuries which resulted in her death prevented her from transacting her business, forced her to expend large sums of money to effect a cure to her injuries, which injuries were serious, permanent, painful and

disfiguring in their nature. In addition, the decedent suffered a loss of wages and a loss of earning capacity.

IV

That at the time of the negligence of the Defendants and the resulting injuries the decedent, the decedent was 40 years of age with a normal life expectancy of 41.6 years according to the United States Life Tables.

V

That Plaintiff's decedent left surviving her children and a mother, each of which has suffered damages as allowed under *12 O.S. § 1053*.

VI

That at the time of the collision, and for many months before, the Defendant, BNSF, was aware of the extra hazardous conditions existing at the grade crossing that would probably result in serious injuries or death to others, but willfully, wantonly and recklessly disregarded the safety of the public by reason of which the Plaintiff is entitled to punitive damages.

WHEREFORE, premises considered, Plaintiff prays judgment against Defendants, and each of them, in a sum in excess of \$10,000.00 as and for actual damages, and for a sum in excess of \$10,000.00 as and for punitive damages against the Defendant BNSF, together with interest thereon, all costs of this action, and for such other relief to which she may be entitled.

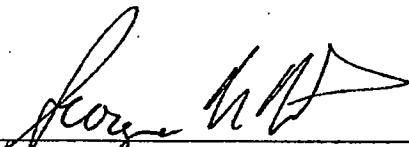
CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing instrument was mailed to the following:

George Gibbs
Robert Hart
601 South Boulder, Suite 500
Tulsa, Oklahoma 74119

Charles Brandt
Pierce, Couch, Hendrickson
Baysinger & Green, LLP
624 South Boston Ave., Suite 500
Tulsa, Oklahoma 74119

dated this 3 day of November, 2008.



George M. Miles